REASONS

AGAINST

IMPRISONMEMT

BY

ARRESTS,

Upon the WRITS,

Capias, *Bills* of *Middlesex*, *Latitats*, and *Common Actions*.

ALSO

The Mischiefs attending the *Vtlawries*, Do Transcend that of the *Capias*, *Bills* of *Middlesex*, *Latitats*, and *Arrests*.

LONDON,

Printed for *Tho. Rooks*, Stationer, MDCLXXV.

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To the Reader.

THat by the Common Law of *England*, the Body could not be Arrested, Impriſoned, or Utlawed for Debt or Dammages, either before or after Judgment, nor the Lands taken in Execution, but the Goods and Chattels, and the profits of the Debtors Lands, by two Writs ordained for that purpoſe, and ſtill in force; *viz.* A *Fieri Facias* of the Goods and Chattels only; and a *Levari Facias* of the Corn, and preſent profits that grew upon the Lands. *Mag. Chart.* 29.

And the Reaſon of the Law, that the Body in caſe of Debt or Dammage, ſhould not be detained in Priſon, was, that the Perſon ſhould alwayes be at Liberty not only to follow his own affairs and buſineſs, but alſo to ſerve the *Commonwealth* when need ſhould require; nor the poſſeſſion of the Lands in that caſe taken away, for that would hinder the following of Tillage and Manufacture, which is ſo beneficial to the *Commonwealth*; which Law continued inviolate for the ſpace of 250 years after the *Norman* conqueſt, until the *Statute* of *Weſtminſter*, the 2. Chap. 11. which firſt gave a *Capias*, and Proceſs of *Vtlawry* againſt Fugitives, and fraudulent Accomptants only; And after the ſame *Statute of Weſtminſter*, the 2. Chap. 18. gave an *Elegit* of the Moiety of Lands, which was the firſt *Act* that made Lands ſubject to Execution upon a *Recognizance* or *Judgment*. *Cook Inſtit.* 2. *p. fo.* 394. Sir *Will. Herb.* Caſe. *Cook lib* 3. *Weſt.* 2. *cap.* 11. *Weſt.* 2. *cap.* 18.

That afterwards by the *Statute* of 25 *Ed.* 3. chap. 17. It was accorded that ſuch Proceſs ſhould be made in Writ of Debt, and Detinue of Chattels, as was then uſed in a Writ of accompt, which was indeed a ſhort, but a very ſharp and cruel Law: yet it is to be obſerved, that ſuch puniſhment was not given in Debt as in Accompt by that Law. 25 *Ed.* 3. *cap.* 17.

That thoſe Laws were afterwards repealed by the general *Statute* of 42 *Ed.* 3. which in Judgment of Law declared all former or ſubſequent *Statutes* (made againſt the *Great Charter*) to be void, and holden for none. 42 *Ed.* 3. *cap.* 1. *Cook Inſt.* 2. *part.*

That notwithſtanding this Golden Law, which reſtored the Peoples Liberty to the full again, yet that ſhort interval of time betwixt the ſaid 25. and 42. of the ſame King *Ed.* 3. (being not above 18 years) had ſo bewitched their minds, and captivated the judgments of ſuch Officers and perſons as received Profit by Impriſoned or Bailed Debtors, as Sheriffs, Bailiffs, Serjeants at Mace, Attorneys, Sollicitors, and other Officers and Attendants in Cities and Towns Corporate, in ſeveral Offices (which were newly created and erected in thoſe times) with the gain that proceeded by the Fees of Writs, Bayles, Outlawries, and other numerous ways extorted from the perſons arreſted, Utlawed, and impriſoned or bailed for Debt, that never ſince could that evil Spirit be caſt out of the generation of ſuch Crafts men and perſons, (otherwiſe eminently learned in the Law) that for Lucre ſake, after the repeal of thoſe aforeſaid cruel *Iron-Laws*, the evil and 25 & 42. of *Ed.* 3.

unlawful practise of the same unto this day continued against all persons but the Peers of the Land.

And either by misconstruction, or inadvertency of the true and genuine sense of the Common Law it self; And of the said general *Statute* of 42. *Ed.* 3. and contrary to thirty *Acts* of *Parliament* since made, in affirmance of the *Great Charter* of the Liberties of the People of *England*, the same evil use of Arrests, Utlawries, and Imprisonment for Debt, and other civil causes, and the Extent of Lands by *Elegit*, continues to this very day; to the utter ruine of the Persons and Estates of the Free-born people of *England*; *Quo jure, Quave injure*, We humbly submit to your better Judgment.

For redress whereof, and in respect that all subsequent *Statutes* whatsoever, made to enthrall the person by Arrests and Utlawry, have relation unto the said
13 *Ed.* 1. Repealed and void Acts of the 13th of *Ed.* the first, and of the 25 *Ed.* 3.
25 *Ed.* 3. and they must by all reason be as void as those *Acts* to which they are related; *And* for that there is no positive *Statute-Law* in force at this day for the continuing of the *Capias* and *Exigent* against the Persons in Debt, and meerly Civil Causes, since the Repeal of the said Laws, by force of the 42 year
42 *Ed.* 3. of the same *Ed.* 3.

May it please all Good people to consider of the Illegality of Arrests, Utlawries and Extents, as well for the common good of all the Free-born People of this Nation, as for the Prisoners causes; That the ancient Liberty of the person may be restored, and vindicated by *Justice*, from the *Tyranny* of those Laws and Times which imposed the said yoke of *Imprisonment* and *Utlawry* upon the People in Civil causes.

And that the ancient and laudable forms for recovering of just Debts, may be by *Original Writs* out of the *Chancery*, and for not appearing, a *Distress infinite*; which course is more beneficial far to the Common-wealth in general, and more remedial to the *Plaintiff* in particular, than either the Bill of *Middlesex*, *Latitat*, *Clausum fregit*, *Capias*, *Vtlegatum*, or *Common Actions* can be) and also that all Judicial Writs may be executed upon the Defendants Lands and goods, by the *Levari facias*, and *Fieri facias*, and not by Extent, upon the *Elegit*, or *Capias ad satisfaciendum*, upon the Body; as the modern practise is, in destruction of the Defendant, all Debts and Damages recovered, being most properly, and by Intendment of the Common Law, to be levied upon the profits of the Lands, and Goods and Chattels only, and not upon the Person. For it is now customary with the Scriveners and Usurers, although they have good Lands for their security, and have had procuration and continuation, and thereby have weakened the Estate of the Borrower; to Enter upon the Premises, Imprison the person of the Borrower, upon his Bond for performance of Covenants, or upon the Covenant of repayment; who being imprisoned, his Credit is destroyed, and all persons are afraid to deal with him: so the said Vermin hath the Lands, that cost his Ancestors 24 years purchase, for 14. which measure hath brought almost all Land to the same Rate. This we can prove by a cloud of Witnesses.

And that all Prisoners for Debt whatsoever, may be discharged Imprisonment, and the *Creditors* left to resort to the *Debtors* Lands and Goods for satisfaction of their just Debts, and not suffer the Free People of this Nation, by malevolent *Creditors* and oppressing Usurers, in *Opposito* of the ancient way, and true legal forms of *Justice*.

So will the Common Laws revive and flourish, the multiplicity of vexatious suits be abated, Tyllage and Trading advanced, the Estates of all persons preserved to their Families and Posterity; malice and envy taken away, oppression and wrong repressed, Peace and Love established in this Nation.

Reasons

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Reasons offered against Imprisonment by Arrests, upon Writs of Capias, Bills *of* Middlesex, *and* Latitats, *and common Actions.*

ALL Plees are either *Placita Coronæ*, otherwise called, *Criminalia*, or *Communia*, or otherwise called *civilia*. *Mirr. Cap. 1. Sect. 4 Stanf. 1. pl. cor. f. 1. coo. 2. Inst. fol. 22. 1.*

In all Criminal causes whereunto the King was always a party, the Bodies of men at the Common Law were subject to Arrests and Imprisonment, So where the Action was *vi & armis*, a *Capias* lay in process, and in such case a *Capias* lay after Judgment, The King might have a *Capias* pro fine, And where a man was a Debtor, or Accomptant to the King, his Body, Goods, and Lands were liable to the execution of the King. *Sir* William Herbert *cap. 3. Rep. Coo 2. Instit. fol. 394.*

Mr. *Kithin* saith, that by the ancient Common Law of the Land, the process in Common Plees, was Summons, Attachments, and distress infinite, the *Distringas* being successively distant fifteen days one from another. Kitchin *retorne 4. tit. Cons Banc.*

At the Commou Law, where a Subject recovered a Judgment, for debt or damages, he could not (except in some particular cases,) take the body of the defendant in execution, or his Lands; But his Goods and Chattels, and the profits of his Lands; for which purpose the Law gave two several Writts, one a *Levari Facias*, whereby the Sheriff was commanded, *Quod de terris & catallis, levari faciat, &c.* the other *a fieri Facias*, which was, *de bonis & catallis*. *Sir* William Herbert *Cap. 3. Rep. Cook 2. Inst. fol. 394.*

This being the Antient Common Law of the Land, that the body shall not be taken in execution for debt or damages, unless it were in special cases: The Lord *Cook* saith, that the reason thereof, was, that the person should be at Liberty, not only to follow his affairs and business, but should be ready to serve the King, and the Country when need should require. *Cook 2. Instit. fol. 394.*

Magna Charta confirms the Law and uſage in this particular; *chap.* 29. which was made in the ninth of *Henry* the third, *Anno* 1224 which eſtabliſheth; *Quod nullus liber homo capietur, aut impriſonetur*, &c. *Niſi per Iudicium parium ſuorum vel ver legem terræ.*

The firſt Act of Parliament that made the perſon liable to an Arreſt in Common Plees, was *Malbridge cap.* 23. made 52. *Hen.* 3. *Anno* 1267. whereby a *capias* was given in Accompt, if the Accomptant had not Lands whereby to be diſtreined.

Malbr. cap. 23.

The miſchief before this Statute, ſaith the Lord *Cook*, was, that the Accomptants ſeeking ſubterfuges, did withdraw themſelves and became vagrant, flying to ſecret places, ſometimes into Forreign Countries, and had no Lands or Tenements, whereby they might be diſtreined: ſo as the Lords were in a manner remedileſs.

Cook 2. *Inſt. fol.* 143.

By *Weſtmineſter* 2. *Chap.* 11. made 13*th Edward* the firſt. Exigent is given againſt Accomptants, as Bayliffs and Receivers, but not againſt Guardians and Soccage, as the Lord *cook* ſaith, ſo might ſuch Accomptants be committed to Priſon by Auditors, being found in Arerages.

Weſtminiſter 2. *Cap.* 11. *C.* 2. *Inſtit. fol.* 380.

There was a miſcheif amongſt Merchants and Trades men, for want of a more ſpeedy recovery of their debts, then the Common Law gave, by reaſon Merchants and Trades-men could not trade without ready money; and Merchant ſtrangers were enforced to ſtay here longer then their tradings required, for recovery of their debts: and therefore the Statute of *Acton Burnel* was made the 11*th Edw.* firſt, whereby a Statute Merchant, was deviſed, and the Body of the Cognizor made liable, if his moveables were not ſufficient, whereupon to levy the debt, and afterwards the Statute of *Mercatoribus* made the 13*th Edw.* 1. adds further ſtrength to this *Law*, and makes the Body, Goods, and *Lands* of the Cognizor liable in a Statute Merchant. Theſe two Laws were then made for the ſpeedy recovery of debts between Merchants.

Acton Burt. 11. *Ed.* 1. *Stat. de Mer.* 13. *Ed.* 1.

The next Statute was the 25*th Edw.* 3. *cap.* 17. which gives the like proceſs in actions of debt, as in Accompt, and in detinue of Cattle and taking of Beaſts.

25. Ed. 3. *cap.* 17.

By the 19*th Hen.* 7. *cap.* 9. like proceſs was given in actions upon the Caſe, as in actions of Treſpaſs or debt, in the Kings Bench, or Common Plees.

19. H. 7. *cap.* 9.

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By the 23*th Hen.* 8. *cap.* 14. like proceſs in every Writ of Annuity and Covenant is given as in debt. 23. H. 8. cap. 14.

Thus by degrees mens perſons by ſeveral Acts of Parliament, made in the Reign of ſeveral Kings, became liable to Arreſts and Impriſonments, In Common Plees, as namely Actions of debt, Accompt, Detinue, Treſpaſs, Annuity upon the caſe Covenant.

It is ſaid in Sir *William Herberts* caſe, third report in the Argument upon this Subject, That the Common Law is founded upon the perfection of reaſon; and ſurely there be many great and important reaſons, why the Antient Common Law ſhould be again reſtored in this point.

Not to inſiſt upon that which the Lord *Cook* ſays was the miſchief that introduced the *capias* upon the Statute of *Malbridge*, which was the firſt statute made for ſuch proceſs, which was becauſe Accomptants withdrew themſelves out of the power of the Lords, and therefore the Lords obtained a *capias* to take them where they could find them to bring them to Accompt. Now if the Accomptants withdrawing themſelves, was a good reaſon for obteining a *capias*; if this proceſs makes Debtors and Accomptants more to obſcure and withdraw themſelves, ſo as they dare not appear to follovv their buſineſs, or manage their Eſtates to the beſt advantage, thereby to enable themſelves to pay their debts, for fear of Sheriffs, Bayliffs, Sergeants, *&c.* who ly in wait for them. It may ſeem to be a good reaſon, for taking away that proceſs, for when a Statute is made to remedy a miſchief; and that miſchief is increaſed by it, that may be a ground to take away that Statute, as well as to make it.

The grievances which the Act of the 25. of *Edw.* the 3*d.* and other Acts (on which the Writs of *capias &c.* are grounded,) have introduced upon the people and Subjects of this Nation are ſuch, that they languiſh to utter ruine in the execution thereof, as dayly appears by theſe enſuing evils committed upon Arreſts by *capias*, Bills of *Middleſex*, and *Latitates.*

All Noble men, younger Sons are liable to Arreſts, as others upon a Common Writ of Capias, *Bill of* Middleſex, Latitat.

Firſt, men are Arreſted oftentimes for pretending great debts, when in truth the perſons Arreſted may owe nothing, but every violence offered, is open ſpleen, revenge, or malice: the perſons thus Arreſted, (Whether the Action be real or feigned,) if worth one thouſand pound more or leſs, when committed to Priſon, are ſuddenly reduced to nothing

The number of Prisoners in the Prisons of this Kingdom are conceived to be 50000. This Ruines most men. But is loss of credit to all.

by which Imprisonment the Prisoners sustain the loss of credit, expos'd to cheats, and oppressions, by Friends, by Tenants, by Servants, *&c.* bereft of all endeavours, and imployments, besides the loss of health, sepe-rated from Friends, their wives, Children, and Families, and what else is dear to any man, left only to be buried alive to be tormented with the debaucheries of a Prison; and their own discontents; by which it appears, this weapon (at the pleasure of any man to use) doth devour and rob the Kingdom of as able, and active persons to serve their Country in peace and war, in any condition whatsoever as any other living in it, by destroying thousands of them in holes and Dungeons, to satisfie private interest, to the great and unheard of oppression and ruine of the Subjects and people of this Nation.

Secondly, If the Arrest be in a Corporation (if a stranger) he must there lye in Prison, if not bayled by freemen of that Corporation; And if the person so Arrested will not lye in Prison, the Prisoner must remove himself by *Habeas Corpus*, by which charge and Fees to Prison-keepers, under-Sheriffs, Bayliffs, and Sergeants, *&c.* (Increasing in a large proportion) the debtor becomes greatly disinabled for payment of his Creditors.

Thirdl, If the Prisoner Arrested, be removed by *Habeas corpus*, and brought up before the Judges, and be not there able to put in Bail, the Prisoner is then sent a Prisoner to the Kings bench, or Fleet.

If to the Kings-Bench, then must he lye three Terms, before the party that Arrested them, by the rules of that Court, is bound to declare upon what cause of Action the party so Arrested is imprisoned, which time before a declaration is filed (as it may happen) will be three quarters of a year, to the destruction of the person, thus causelessly, and maliciously Arrested.

If committed to the Fleet, there can be no declaration filed against the Prisoner, unless by *Habeas corpus*, brought up to the Common Plees Bar first, there to be charged; and whither the Action be feigned or real, the Prisoner hath no remedy at all for such Arrests, wrong oppression, Imprisonment, breach of Credit, and damages susteined in his Estate (it may be) to the utter ruine and undoing of his Wife, Children, and Family.

Contrefane. char.

The word debet ni Decet.

Fourthly, the words of the Action for debt, is but

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a ſurmiſe. and its a moſt deſperate thing for a man to be actually impriſoned upon a ſurmiſe only.

Fifthly, Arreſts and Impriſonments take away all induſtry and endeavours from all men, and by the want of mens liberties, the Kingdom ſuſtains great damages, the parts and Abilities of mens minds and bodies in their ſeveral capacities, being ſtifled, and buried alive in Dungeons, and loathſom Priſons; whereas mens Liberties and Induſtries hath enabled thouſands of men to pay their debts, and raiſe their Fortunes, which by Reſtraint had been very impoſſible; Impriſoning and immuring men, fitting them only to have all they have torn from them, to ſatisfie the extorted Fees of cruel Priſon keepers and their adherents.

For if a poor labouring man, or mean Tradeſman, borrow, or become engaged for ten or twenty pound, more or leſs, upon his own ſecurity, or otherwiſe; by his liberty and freedom to follow his Calling or Labour, perhaps earn thirty or forty pound a year, and he thereby is enabled to diſengage and make payment of his Debts, and provide for his Family while he is at Liberty; but when once Arreſted, and caſt into Priſon, his Credit is loſt, his Endeavours in his Calling or Labour taken from him, and ſuddenly bereft of all he has, and himſelf, Wife and Children left to periſh by beggary and miſery, which poor man, before his Arreſt and Impriſonment, was able, by his Liberty, Labour, and Endeavours, to have maintained his Credit, paid his Debts, and provided for his Wife, Children, and Family.

Sixthly, Arreſts are dangerous in the conſequence; for many times Murders and Manſlaughters do happen to the abl ſt of men, both of Parts, Eſtates, and Qualities, thereby ſubjecting them to the Force and Rudeneſs, and Vileſt Uſage of the worſt of men, mercileſs and cruel: For Bailiffs, Serjeants, and Marſhals men, regard neither Age, Sex, nor Condition or Quality: For that the Arreſts, and Violent attempts made to enſlave men, ſerve only to enrich the Under Sheriffs, Bailiffs, Serjeants, Catchpoles, and ſuch like, and for the maintenance of their Rior, Exceſs, Drunkenneſs, and Debaucheries; for which cauſe they Extort unreaſonable Fees, taking Bribes of all hands, buying and ſelling both Creditor and Debtor for their own profit, apprizing, and underhand ſelling, to their own uſes, for the tenth part of the worth of the poor Priſoners Goods and Chattels; So that the greateſt part being devoured by thoſe Perſons, the Priſoner and his Family is thereby utterly

ruined

ruined and deſtroyed, and the Creditors, in all things but their Malice, left altogether unſatisfied.

Seventhly, Great damages are frequently recovered againſt Sheriffs, upon Reſcues made, and Eſcapes, as every dayes Experience brings forth.

All Writs and Proceſs in Law are truly intended for Remedy and Redreſs, not for Revenge, Oppreſſion, and Wrong. And is it not monſtrous in Nature and Reaſon, that Man ſhould be allowed a Replevin to ſave a Beaſt from ſtarving in a pound, and that Man himſelf only ſhould be ſhut up in priſon, to periſh without help or relief?

Quere. How the poor borrowed Money before the *Act* 25 *Ed.* 3.

Quere. Whether any perſons be enabled to pay their Debts by being arreſted and impriſoned, if they have not wherewith?

Thus far the Evils of Middleſex Bills, Latitates, *and* Capias.

The miſchief attending the Utlaries, *tranſcend that of the* Capias, Bills of Middleſex, *and* Latitates.

UTlawed perſons are ſaid to be *Utlegati*, that is, *extra Legem poſiti*, deprived of the benefit of the Law, the penalty whereof was ſo Great, that in the Reign of King *Alfred*, and a good while after the Conqueſt, no man could be utlawed but for Felony, the puniſhment whereof was death.

In *Bractons* time, and ſomewhat before, Proceſs of Utlary was ordained to lie in all *Actions* that were *quare vi & armis*, which *Bracton* calls *delicta*, for there the King ſhould have a Fine.

Cook Inſtit. Fol. 46.

By divers Statutes ſince made, as by the impriſonment of mens perſons by *Capias*, *Bills* of *Middleſex*, *Latitates*, and *cap. ad ſatisfaciend.* after Judg-

Judgments, hath by degrees crept in, to the alteration of the Common Laws, in Actions of Account, Debts, Detinue, Covenant, Actions upon the Statute of 5 *R.* 2. and *Actions* upon the Case, and in divers other common and civil *Actions*, so Utlawing of mens persons thereupon hath ensued, but the mischief that attends the Utlawry of mens persons, do much transcend those of *Arrests*, and Imprisonments of mens persons.

For first, By Utlawries, before and after Judgment, the Debtor suffers more than in any other thing yet known in *England*, yea, more than by Manslaughter, or petty Larceny; for in all those things the Subjects are allow'd a Defence, but for this none. In all Courts, and for all *Actions*, the persons concerned must have cognizance of the proceedings, something must be committed; but an Utlawry, though suppositious and fictious, is sufficient alone to serve the turn for the destruction of the party Utlawed. The Delinquents in criminal Acts, for some causes, forfeit but Chattels, and personal Estates onely, and for those, a pardon of Course for suing out: but upon Utlawries the Debtors Chattels and personal Estates are wholly lost, and the real Estate seized and extended for the King (who is not six pence a year benefited) nor the Creditors one Farthing. The mean profits not being in any part discounted for the Debt, and yet the Utlawed person destroyed, and also his Creditors defeated of their just Debts; if the Debt be small, the Cure is worse than the Disease; if a great one, the Debtor is never able to give in Security to reverse the Utlawry, and free the Extent upon the Utlawry, but perisheth inevitably; and not a penny of the Debt lessened to the Creditor, or abated to the Debtor, nor the Kings Majesty above five shillings, or ten shillings a year enriched, and that consumed in *Fees* also.

Secondly, The poor Utlawed Debtor can neither sue for, nor recover any Debt or Rent due to him, or try any title for recovery of any Estate, or let any Lease, or make his last Will and Testament, or do any other act to help himself, or his Family, after his death, neither can the Son reverse the Fathers Utlawry after his death; so that once utlawed after Judgment, or otherwise, and the whole Family, is ruined for ever: and none but Sheriffs, Bailiffs, such like, and their officers, one farthing the better. Neither can the Utlawed person sue or implead his Oppressor: & all for Debt (which is no crime) & yet criminous persons are not subject to, or oppressed with such mercilesse extremities. Neither is it possible for, or in the power of

4 H. 7. 17. Br. 31. tit. Sec. 197. Co. 1 Inst. 128. 6, 8 Ed. 4. 6.

of any man, how provident, or clear from debt ſoever, to prevent, or free him'ſelf from this ſnare, and pitfall of deſtruction.

Thirdly, A *Ward* might call his Guardian to accompt, and was priviledged from being ſued in other Courts, and had protection both of his Perſon and Eſtate; but here is no accompt for profits, nor Right for Wrong: No protection of perſon, but Oppreſſion in all, and barr'd from all Relief and Remedy (even ſo much as to complain) ſo as the miſchief of the Utlawry incomparably tranſcends the *Capias*, in that the *Capias* attaches the Perſon only, the *Utlawry* Body, Lands, and Goods.

18 *Ed* 4. *Nichols* vers *Nichols*. Plow 487.

Fourthly, If two or three joyn to lend an hundred, or a thouſand pound, more or leſs, to a third perſon, and one of the Creditors Utlawed (though perhaps unknown) the whole Debt is forfeited to the King, and the Debtor can pay neither of the three, or two, which lent the money, ſo as theſe that are not Utlawed, have loſt their money, and forfeited their Debt, as well as he that is Utlawed.

Sir *John Matchets* Caſe.

The like for Tenants in Common; if any of them are Utlawed, the whole Eſtate of the other Tenants becomes forfeited, and ſeized for him that's Utlawed, and the other Tenants not Utlawed ſhall have no remedy, nor can reverſe the others utlawry, being none of theirs. And any man may be Utlawed upon pretence of Debt, Detinue, or Treſpaſs, whether true or falſe, and never know of it: the Utlawry may be undiſcovered, and the perſon dye under that danger, to the deſtruction of his poſterity.

Fifthly, Forfeitures by Utlawries go to the Crown, without benefit to the party, whoſe ſatisfaction the Law intends and the parties thus Utlawed, are without remedy againſt the party that doth the wrong, and without relief as to the King, for forfeited goods and chattels (if not *ex gratia*, beſides the injury done in Fleecing thoſe Goods by Bailiffs, and their Under ſheriffs, whoſe ſhares are the greateſt proportion of ſuch forfeitures, by which his Majeſty loſeth a Million of pounds yearly, and the people ruined.

Sixthly, Utlawries brings the Free-houſhoulder that his Free-hold is under Seizures and Extents, and is exceeding chargeable to plead unto, and to reverſe: And the uſe that is made of Seiſures and Extents thereon, is known to be little available towards ſatisfaction of Creditors their juſt Debts, but abſolute deſtruction to the

Forfeitures are the Kings. 38 *Ed.* 3. 22. 16 *Ed* 4. 4. *Brook* ult. 17. 20 H. 2. 21 H. 7. 18 *Aſſ.* p. 5. 5 H. 6. 20.

the Utlawed perſon; the parties utlawed may be ſued, but cannot ſue for his own, Utlawries being diſablements in Law. It's hard to pay where a man cannot receive.

Theſe miſchiefs, by the corruption of practice, have crept in under this Act of 25. *E.* 3. notwithſtanding upon complaint of the people, in the 44th year of the ſame King *Edward* the 3d. it was repealed, and the Subject remitted in their former right, according to the Common Law, and *Magna Charta*, ſave only to ſuch as were Accountants to the King.

The Act of *Ed.* 3. repealed, ſaving Accountants to the King.

It is not unknown to all Judicious, That by the Common Law of this Nation, no mans perſon could be arreſted in Debt or Detinue, &c. The Lands, Goods and Chattels of the Debtor were only liable to Execution, which the Law allows for ſatisfaction of Creditors; and former times, in caſes of Debt between party and party reſted thereupon: the perſon of the Debtor being in ſtrict impriſonment, payes not the Debt to the Creditor, but moſt times ſatisfie the malice of the Creditor onely. And it cannot be denied, that the Lords now living, and as Peers, free from Arreſts, yet pay their Debts out of their Eſtates, as well, and better than ſuch as are Priſoners can do (which very Preſident obvious to all) makes it appear, that Impriſonment neither advantages nor prejudices the Creditor, but ſerves only to enrich the Priſon-keeper, and by him the Priſoner is ruined. The fore-going Miſchiefs, Trouble, Loſs, Oppreſſion, and Dammage conſidered, which doth daily happen by Bailiffs, Serjeants, and the like, to the enſlaving and oppreſſion of the Subjects, and all derived from that Act of 25 *Edw.* 3. and how pregnant the preſent practice is to the known Laws of this Realm. It will plainly appear, that this one Nation is impoveriſhed yearly by Sheriffs, Bailiffs, Serjeants, Marſhals-men, Proceſs-makers, *Habeas Corpus*, Day Writs, Rules, Writers, Keepers, Wardens, with bribing Sheriffs and their Deputies, and Bailiffs for intelligence, and forbearing of Arreſts and Proſecutions, beſides the perſonal injuries put upon men of all conconditions by theſe Tormentors, more than one Million of pounds yearly in ready coin, for which the Creditor is not the better one penny; which were better diſpoſed of, and paid for the defence of the Nation, and payment of Navies, &c.

Cook 2 Inſt. 394. Vid. Cook 2. 3. 12. 13 H. 4. 1.

Malbr.

In ſhort, that this practice now on foot upon the *capias*, Bills of *Mid-*

dlesex, *Latitates*, and *Utlaries*, may be the more triumphant, to the enflaving of all, it speaks thus;

Utlaw a Noble-man, and he is made incapable to sit in the House of Peers, untill the Utlary be revers'd; and may be Arrested as a common person, being Utlawed; and all his Goods and Chattels forfeited, and apprized by every Under-sheriff, and sold; and brings his real Estate under Extent.

Utlaw a Clergy man, of what Degree or Qualification soever, and their Living, and personal Estates are both forfeited together; and by any Under-sheriff sold as aforesaid, if it be in his Bailywick, and his person imprisoned, if arrested.

Utlaw a Gentleman, and it's the same, his Person and Estate, both real and personal forfeited, and himself, if arrested, a Prisoner.

Utlaw any Lawyer, and he is made uncable to plead at Barr, his person, if arrested, imprisoned, and his Estate, both real and personal, the one Extended, and the other Forfeited.

Utlaw any Citizen, rich in stock, as a Merchant, Jeweller, Goldsmith, or any other eminent Tradesman; what he hath is forfeited, and himself a Prisoner, if arrested.

All men may be Arrested, and Utlawed, under feigned Actions, by created and suppositious names, to their utter undoing, and never find out the Plaintiff, or the Attorney, to recover their damages.

Now the freeing, discharging, and setting at liberty all Prisoners now in Prison, and under restraint for Debt, and the Repealing of this Act, and all others of 25. *Edw.* 3. And the taking away of all Arrests and Utlawries, and the sad Consequences and Effects; so much contrary to *Magna charta*, *Petition of Right*, and the *Common Law*, elder than both, is the matter aimed at, and humbly prayed for: that so the Subject may be remitted, and restored to their former Laws, *ab Origine*.

And it's no new thing, when the continual repealing in all ages, of divers Statutes, when found inconvenient, or against the Common Law, makes it manifest.

As { Tenure in Villinage.
Mortmain on Abbies.
Knights Templers, and St. *Iohns*.
Bishops Courts, for being burdensome and chargeable to the people 8000 *per annum*.

And

And that it may be Enacted in the future, That no Perſon whatſoever ſhall be Arreſted, or Utlawed, for any matter or thing whatſoever (not criminous) in the Act of 25 *Edw.* 3. and other Acts contained, for the avoiding the manifold miſchiefs aforeſaid; and that which is generally introduced upon the whole Nation. The deep ſenſe his late Majeſty (of ever bleſſed memory) had of his peoples ſufferings, occaſioned by the Writs and Proceſs, as aforeſaid; made his Majeſty intend to have recommended the enlargement of Priſoners for Debt, and the aboliſhing of all Arreſts and Utlawries for the future, to the then Parliament, could he have received any recompence for the remitting of Forfeitures, and other profits ariſing to his Crown; which by an Act now tendred to the Honourable Houſe of Commons, is provided for.

How much terror and ſorrow of heart the People and Nation in general lye under, who now hide themſelves, and languiſh to death, under the fear of Impriſonments and Arreſts, conſuming all their Fortunes; not daring to ſhew themſelves, to manage it to their beſt advantage, toward the payment of their Debts, or otherwiſe, for fear of Sheriffs, Bayliffs, Serjeants, Marſhalls-men, Priſon-keepers, *&c.* the Subjects and their Poſterities by this means being born Slaves, liable to all Arreſts, Impriſonments, and Utlawries; and on all accidents to Beggary and Bondage, at every mans will and pleaſure: On the contrary, upon the paſſing of this Act of Grace, depends the good and welfare of the People, the whole Nation being manumitted, and enfranchiſed in their Perſons, reſtored in their Laws, ſecured in their Eſtates, and of a baſe and ſlaviſh Nation, made Noble and Free, as they were before the Act of 25th *Edw.* 3. other Acts was had.

To conclude, If Traytors and Felons of all ſorts, expect remiſſion and pardon of their Offences, upon the bleſſed reſtauration of his Sacred Majeſty, how is it to be doubted, but that the good Subjects of this Land and Nation (not criminous) ſhall find remedy and redreſs; and be Relieved from their ſad and lamentable thraldome and bondage; eſpecially when the known Law of Equity affords the Creditor ppwer for the Recovery of his juſt Debts, upon the Debtors real and perſonal Eſtates; which is at the diſpoſe of the Creditor for his ſatisfaction. And this one Act of Grace will be accounted

counted by all good men and their posterities, a sufficient recompence for all the Subjects past sufferings; being the greatest mercy that ever King of *England* extended to his Subjects since they were a Nation.

FINIS.

THe Oppression by a Multitude of Attorneys, who have a Liberty by vertue of their Priviledge, to sue all people Frank, and can put a hundred in one Writ, and thereby hold them to special Bail, let the cause of Action be what it will; By virtue of which said Priviledge, they ruine thousands *per Annum.*

They have their Law proceedings *Gratis*, and yet make the poor people pay full charges, as if they paid all charges themselves: which great profits incourageth their aforesaid Oppression.